

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

Crl.Rev.Pet.No. 921 of 1998()

**CRA.265/1996 of III ADDL.SESIONS COURT, ERNAKULAM
CC.221/1989 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI
.....**

REVN. PETITIONER: REVISION PETITIONER

**SAHADEVAN, AGED 59,
S/O.VELAYUDHAN, CHOKEEYIL VEEDU,
PASHNITHODU DESOM,
PALLURUTHY VILLAGE.**

BY ADV. SRI.N.K.MOHANLAL

RESPONDENT/RESPONDENT

**STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR26

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 26/10/2007 , THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

J.B. KOSHY, J.

Crl.R.P. NO.921 of 1998

Dated this the 26th day of October, 2007

Order

Revision petitioner was charge-sheeted for offence punishable under section 326 of the Indian Penal Code. The allegation was that at about 8.00 a.m. on 16.3.1987 accused beat with a handle of knife on the chest of CW2 and voluntarily caused hurt on the left finger of PW3 by cutting with a knife and hit with an iron ingot which is a dangerous weapon. The incident happened on the foot path in front of the provision shop of accused bearing No.CC XX/20 in Palluruthy. PWs 1 and 2 are the eye witnesses. PW3 is the injured person. Their evidence concurrently show that the incident occurred as alleged by the prosecution and the evidence of PW3 is corroborated by the evidence of eye witnesses, PWs 1 and 2. Even though PW4 another occurrence witness turned hostile, his evidence was of no help to the prosecution and the defence as he has stated that he has not witnessed the incident. PW5 issued Ext.P2 medical certificate which shows the following injuries:

- "1. Abrasion on the lower lip;
2. Lower incisor are lissed;
3. Abrasion on the index finger left."

PW8 is the Assistant Surgeon of Palluruthy Hospital. He referred the patient by Ext.P6 to E.N.T. Surgeon. PW9 is the Civil Surgeon, Government Hospital, Ernakulam. After seeing the audiogram certificate and perusing the records, he stated that deafness of left ear was permanent and irrecoverable and he has treated her. He issued Ext.P8 certificate showing the treatment of PW3. Even though chit was given to Suma Agencies for taking audiogram of PW3, audiogram slip will not show that it is related to PW3 and the person who has taken the audiogram was not examined. There is also no evidence to prove what was the hearing capacity before the incident. In these circumstances, I cannot definitely come to the conclusion that permanent deafness of the ear was caused as a result of the incident. In the above circumstances, it cannot be stated that even though dangerous weapon was used, it cannot be stated that a grievous injury was caused. But, serious injury was caused to PW2 by using dangerous weapon and he is liable to be convicted under section 324 of the Indian Penal Code. In fact, originally, he was charge-sheeted for offence punishable under section 324 IPC. His conviction and sentence under section 326 are set aside and he is convicted under section 324 IPC and he can be sentenced to undergo imprisonment for a period of three months

with a fine of Rs.5,000/-. If the fine is not paid, he has to undergo default sentence for another six months. Thus, the criminal revision petition is disposed of setting aside the conviction and sentence under section 326 IPC, but, convicting the petitioner under section 324 IPC to undergo rigorous imprisonment for three months and to pay a fine of Rs.5,000/-. If fine is not paid, he shall undergo imprisonment for only three months. He is also entitled to right of set off.

J . B . KOSHY
JUDGE

J.B. KOSHY, J.

Crl.R.P. No.921/1998

Order

Dated:26th October, 2007